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10/799,647	03/15/2004	Martin Wyeth	3011-1003	8088

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EXAMINER
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SHAH, MILAP

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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08/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/799,647

**Applicant(s)**

WYETH, MARTIN

**Examiner**

Milap Shah

**Art Unit**

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This action is in response to the response received on July 20, 2007. The Examiner acknowledges that no claims were amended, canceled, or added. Thus, claims 10-12 are currently pending.

This action is to be considered a supplemental Final Office Action to correct errors in the previous Final Office Action (mailed June 1, 2006) that were inadvertently made. The finality of the previous action is withdrawn in view of this supplemental final office.

The time period for reply to the Final Office Action is hereby reset and begins from the mailing date of this action.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Witler et al. (U.S. Patent No. 5,375,832).

**Claim 10:** Witler et al. disclose the same invention including a ball detection apparatus resident in a golf analyzing apparatus for detecting when a golf ball is hit comprising a radar device which detects a swing speed of a golf club towards a tee and which produces a first signal corresponding to said swing speed (abstract and column 8, lines 8-15, where the "saturation detector" detects movement of the golf club head), a microphone for producing a second signal in response to detecting the sound of the golf club striking a golf ball (abstract & column 8, lines 16-23, where the "acoustic trigger" is being considered equivalent to a directional microphone, which both detect

the sound of the golf ball being struck by the golf club), and a monitoring means for detecting a coincidence between the first and second signals, when the second signal is above a predetermined threshold, wherein the monitoring means produces an output signal only if the coincidence is detected (abstract & column 8, lines 19-21, where the indication signal which is the first signal and the trigger signal which is the second signal are "ANDED" together via circuitry to produce an output signal only when both of these input signals are positive, meaning, both signals are coincident).

Witler et al. explicitly lack disclosing that the threshold of the trigger signal being set high is based upon the amplitude of the first signal of the swing speed of the golf club towards the tee. However, Witler et al. disclose at least one method of ensuring that false triggering does not occur, such as a club selector switch 24 (figure 2), where a user is able to select which club they are to be using during the next swing such that the circuitry adjusts to detect signals corresponding to the force and momentum needed by the selected club (i.e. a driver needs a full swing and momentum and will produce a loud sound when the golf ball is struck, whereas, a putter needs a smaller swing and less momentum and will produce a softer sound when the golf ball is struck). However, regardless of the deficiency, it would have been notoriously well known in the art to have dynamically or variably modify the threshold for the acoustic trigger in accordance with the amplitude of the first signal for at least the reason to more efficiently carry out the prior art systems method, which requires a user to select a club, where the system would be more user friendly and for the additional reason that a plurality of different possible golf shots require different swing speeds, thus, producing different golf club-to-ball impact sounds. It is considered notoriously well known in the art and other arts to base one signal off of another signal. Thus, a person of ordinary skill improving upon the system of Witler et al. would have found it obvious to

use well-known methods to produce an expected or predictable result. One skilled in the art possessing the knowledge of the prior art system and possessing the knowledge of common circuitry design, where signals are capable of being codependent upon other signals (i.e. digital logic circuits), would have found it obvious to modify Witler et al. to adjust the monitoring means to vary the predetermined level of the acoustic trigger in accordance with the amplitude of the swing speed signal. The physical structure of the prior art system would not have been modifiable with such an improvement and such an improvement would not have hindered the operation of the prior art system. Therefore, to reiterate the Examiner's position, the Examiner respectfully submits the simple rationale, that, it would have been obvious to modify Witler et al. because the technique for improving upon the device of Witler et al. was part of the ordinary capabilities of a person of ordinary skill in the art at the time the invention was made.

**Claim 11:** It appears that the range of values claimed are the typical range of values for a struck golf ball, thus, they are considered obvious and are given no patentable weight unless otherwise disclosed by the Applicant that these specified ranges produce any unexpected results. It is well known in the art (such as in U.S. Patent No. 6,589,124) for a golf ball being struck to have its audible frequency range between 2khz and 5khz.

**Claim 12:** Witler et al. discloses the invention substantially as claimed (see above rejection of claim 10) except for explicitly disclosing the scenario where the monitoring means only produces the output when the detection determines the first signal is at or close to its peak level. However, regardless of this deficiency, it appears such a modification is only a matter of obvious design choice. As discussed above, it has been established that it would have been obvious to variably change the threshold to determine a coincidence based on the amplitude of the first signal, where it appears the designer of such a system is capable of setting that threshold only when the first signal

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is at or close to its peak if the designer so wishes, where such a modification appears to be only a design consideration for the purpose of only producing an output when the most desirable scenario arises. The Applicant has not disclosed that such specific feature solves any stated problem or is for any particular reason and it appears the invention would have worked equally well if the first signal only needed to be at half peak level. Therefore, it would have been prima facie obvious to obtain the invention as specified in claim 12.

### *Response to Arguments*

Applicant's arguments with respect to claims 10-12 have been considered but are moot in view of the new ground(s) of rejection. The rejection(s) of the previous action containing errors are hereby withdrawn. The new rejections are based on prior art already cited in the application.

The Examiner submits that this action is properly made final for at least the reasons that the previous action contained errors directed to the interpretation of the relied upon art and the claims would have been properly finally rejected using art of record as recited in this action. Therefore, this supplemental action merely corrects said errors and submits a replacement rejection based on art that has already been part of the record (i.e. Witler et al. was relied upon in the non-final action mailed October 26, 2006).

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing

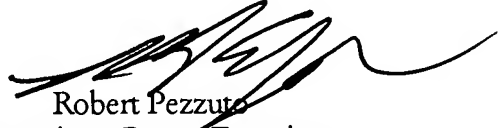
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date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milap Shah whose telephone number is (571) 272-1723. The examiner can normally be reached on M-F: 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Robert Pezzuto  
Supervisory Patent Examiner  
Art Unit 3714

M.B.S.